Supreme Court, U. S.
FILED
MAY 27 1978
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

October Term, 1977

No. 77-1698

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION,
*Petitioner,*

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 249,
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDICES

MARTIN LUBOW,
LUBOW & PROZZI,
804 Commonwealth Building,
316 Fourth Avenue,
Pittsburgh, Pennsylvania 15222,
*Counsel for Petitioner,*
*Western Pennsylvania Motor Carriers Association.*

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON, SENIOR REPRESENTATIVE
HAROLD L. BERKOBEN, REPRESENTATIVE
1701 PARKLINE DR., PITTSBURGH, PA. 15237
412-931-7403

## INDEX.


| | Page |
|---|---|
| Opinions Below | 1 |
| Jurisdiction | 2 |
| Question Presented | 2 |
| Statutes Involved | 2 |
| Statement of the Case | 2 |
| Reasons for Granting the Writ | 7 |
| I. The decision of the Third Circuit is contrary to national labor policy and is in conflict with decisions of this Court | 7 |
| II. The decision of the Third Circuit is in conflict with the decision of another Court of Appeals | 11 |
| III. This case presents important issues of national labor policy requiring resolution by this Court | 14 |
| Conclusion | 17 |
| Appendix A—Order | 18 |
| Appendix B—Memorandum Opinion | 19 |
| Appendix C—Opinion of the Court | 30 |
| Appendix D—Judgment | 41 |
| Appendix E—*Sur* Petition for Rehearing | 43 |
| Appendix F—Statutes Involved | 44 |

Page

## TABLE OF AUTHORITIES.

*Cases.*

*Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) 15
*Andrus v. Convoy Company*, 480 F.2d 605 (9th Cir. 1973) ..... 9,11,12,15
*Avco Corp. v. Aero Lodge 735*, 390 U.S. 557 (1968) ... 15
*Bieski v. Eastern Automobile Forwarding Company*, 396 F.2d 32 (3d Cir. 1968) ..... 9,12
*Controlled Sanitation Corp. v. District 128*, 524 F.2d 1324 (3d Cir. 1975) ..... 13
*Gateway Coal Company v. Mine Workers*, 414 U.S. 368 (1974) ..... 8
*General Drivers, Warehousemen and Helpers, Local No. 89 v. Riss & Company, Inc.*, 372 U.S. 517 (1963) ..... 8,14,15,16
*Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976) ... 15
*Humphrey v. Moore*, 375 U.S. 335 (1964) ..... 14,15
*International Association of Machinists v. Cutler-Hammer, Inc.*, 271 App. Div. 917, *Aff'd* 297 N.Y. 519 (1947). 10
*International Association of Machinists v. Texas Steel Company*, 538 F.2d 1116 (5th Cir. 1976) ..... 13
*Local 719, Bakery and Confectionary Workers v. National Biscuit Company*, 378 F.2d 918 (3d Cir. 1967) ..... 13
*Morris v. Werner-Continental, Inc.*, 466 F.2d 1185 (6th Cir. 1972) ..... 11,12
*Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971) ..... 15
*Nolde Bros., Inc. v. Bakery Workers*, 430 U.S. 243 (1977) 8
*Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965) .. 15
*Teamsters v. Braswell Motor Freight Lines*, 392 F.2d 1 (5th Cir. 1968) *reh. denied in part* 395 F.2d 766, *appeal after remand* 428 F.2d 1371, *cert. denied* 401 U.S. 937 (1971) ..... 11,12,13,15



Page

*Torrington v. Metal Product Workers Local 1645*, 362 F.2d 677 (2d Cir. 1966) ..... 10
*United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960) ..... 7,8
*United Steelworkers of America v. Enterprise Wheel & Car Company*, 363 U.S. 593 (1960) ..... 7
*United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U.S. 574 (1960) ..... 7,8,10
*Vaca v. Sipes*, 386 U.S. 171 (1967) ..... 15

*Texts.*

Azoff, "Joint Committees as an Alternative Form of Arbitration Under the NLRA," 47 *Tul.L.Rev.* 325 (1973) 9,14
Dunau, "Three Problems in Labor Arbitration," 55 *Va.L.Rev.* 427 (1969) ..... 16
Feller, "A General Theory of the Collective Bargaining Agreement", 61 *Calif.L.Rev.* 663 (1973) ..... 14
Jones, "The Name of the Game is Decision—Some Reflections on Arbitrability and Authority in Labor Arbitration," 46 *Texas L.Rev.* 865 (1968) ..... 10

*Statute.*

Labor-Management Relations Act of 1947, as amended (61 Stat. 136 *et seq.*) (29 U.S.C. § 141 *et seq.*):
Section 203 (d) (29 U.S.C. § 173 (d)) ..... 2,7
Section 301 (a) (29 U.S.C. § 185 (a)) ..... 2,15,16

IN THE

# Supreme Court of the United States

---

**October Term, 1977**

---

**No. .....**

---

WESTERN PENNSYLVANIA MOTOR
CARRIERS ASSOCIATION,

*Petitioner,*

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, LOCAL 249,

*Respondent.*

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDICES

Western Pennsylvania Motor Carriers Association, Petitioner, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit entered in the above-titled case on March 30, 1978, rehearing denied April 24, 1978, in which the Third Circuit reversed the District Court and remanded the case with directions.

### Opinions Below

The opinion of the Court of Appeals has not yet been reported, but is printed in Appendix C, attached hereto, *infra,*

p. 30. The opinion of the District Court is officially reported at 430 F. Supp. 1258 (W.D. Pa. 1977), and is printed in Appendix B, attached hereto, p. 19.

## Jurisdiction

The judgment of the Court of Appeals was entered on March 30, 1978 (Appendix D, *infra*, p. 41). A petition for rehearing, timely filed, was denied on April 24, 1978 (Appendix E, *infra*, p. 43).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

## Question Presented

Whether the determination of a joint labor-management committee that a dispute is arbitrable, which is made in the course of rendering a final and binding decision on the merits, is subject to judicial review under the standard set forth in the *Steelworkers Trilogy*, or under a standard of reasonableness.

## Statutes Involved

This case involves the interpretation and application of Sections 203(d) and 301 (a) of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 136 *et seq.*, 29 U.S.C. § 141 *et seq.* (hereinafter "The Act"). They are printed in Appendix F, *infra*, p. 44.

## Statement of the Case

On June 18, 1976, Respondents, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 249 ("Union"), brought this action in the United States District Court for the Western District of Pennsylvania under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. § 185. The



Union sought to have an arbitration award by the Eastern Conference Joint Area Committee ("Committee") set aside, and to enjoin the Western Pennsylvania Motor Carriers Association ("Association") from implementing the Committee's award.

The Association represents motor carriers and allied employers and is charged with the negotiation and administration of labor agreements affecting the operation of those carriers in twenty-nine counties of Western Pennsylvania. The Union is the collective bargaining agent for a number of the employees of the Association's members in Allegheny County, Pennsylvania. The Association and the Union have entered into several collective bargaining agreements in the past. This action involves a dispute which arose in 1975 over a provision of the collective bargaining agreement which was then in force until March 31, 1976. That agreement consisted of the National Master Freight Agreement and Teamsters Joint Council No. 40 Freight Division Local Cartage Supplemental Agreement (J.E. 1; R. 63a-75a).[1]

The dispute concerned a trucking industry practice known as "spotting". This term refers to an employer's practice of directing its drivers to leave their trailers at a specified location for loading and unloading. When the trailer is spotted, the employee is directed to leave the location while the vehicle is loaded or unloaded. The employee is then assigned other duties, rather than remaining with the tractor on a paid status.

---

[1] For the convenience of this Court, all page references will be to the Appendix filed by the Union in the Court of Appeals. They will be designated as "R. ....".

Spotting has been permitted in every county of Western Pennsylvania except Allegheny County. The practice in Allegheny County had been to limit the right to spot to a few designated facilities.

Although there has never been any specific contractual prohibition of spotting, the restrictions against spotting in Allegheny County have been in existence since 1958, and they have been maintained in subsequent agreements since that time by a Maintenance of Standards Clause. This clause, which is found in Article 6, Section 1 of the National Master Freight Agreement and Article 44, Section 1 of the Local Cartage Supplemental Agreement, provides as follows:

> "The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. It is agreed that the provisions of this section shall not apply to inadvertent or bona fide errors made by the Employer(s) or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of the error. If not corrected within ninety (90) days, such better condition shall remain in effect. However, a request for relief from such error may be filed in writing with the appropriate Conference Area Committee. The Conference Area Committee, by a majority vote, shall determine whether and in what manner such better terms and/or conditions resulting from such error shall be continued or eliminated. . . . Any disagreement between the Local Union and the Employer with respect to this matter shall be subject to the grievance procedure."

On July 3, 1975 the Association—on behalf of its Allegheny County employer members—submitted a request for relief



from the spotting restrictions to the Committee, pursuant to Articles 6 and 44 of the collective bargaining agreement (R. 76a-78a). Under these provisions, the request was submitted to the Eastern Conference Joint Area Committee. The Committee was established under Article 45, Section 2 of the collective bargaining agreement. The submission of such a request under Articles 6 and 44 was the usual course of procedure in the Eastern Conference as well as other Conferences throughout the country (R. 41a).

The Committee assumed jurisdiction over the Association's request and held a hearing. Although the Union signed a joint submission form agreeing to be bound by the Committee's decision, the Union then disputed the Committee's jurisdiction over the dispute but argued the merits of the spotting issue (Pl. Ex. 3; R. 80a).

On October 29, 1975, the Committee reserved decision in the matter but retained jurisdiction over the case. The Committee ordered the parties to attempt to reconcile the dispute at the forthcoming national negotiations for a new contract (Pl. Ex. 3; R. 80a).

Both parties unsuccessfully attempted to settle the matter during their 1976 freight negotiations. Thereafter, on May 7, 1976, the Committee—pursuant to its decision of October 29, 1975—rendered a decision on the merits of the Association's Request for Relief. The Committee granted the Association's request and thereby eliminated the restrictions on spotting in Allegheny County (Pl. Ex. 11; R. 90a). Under the terms of the collective bargaining agreement, the decision of the Committee was "final and binding with no appeal." (R. 80a). The Union then filed this action in District Court.

The District Court noted that the issue before it was not the merits of the Committee's award but rather the "jurisdiction . . . of the arbitrator to consider the dispute and make *any* award, including the one ultimately rendered." (Appendix B,

*infra*, p. 23) [emphasis in original]. The District Court, being "mindful of the strong policy favoring arbitration and findings of arbitrability," found that the Committee did have jurisdiction to hear the Association's Request for Relief (Appendix B, *infra*, pp. 27-28).

The Court of Appeals for the Third Circuit reversed the order of the District Court and remanded with directions to vacate the Committee's award.

The Court of Appeals noted that the question before it was whether the Committee had jurisdiction to grant the requested relief. Although the Court of Appeals was "mindful of the strong presumption in favor of arbitrability", it stated that it could "independently decide the reasonableness" of the Committee's "implicit determination" that the dispute was arbitrable (Appendix C, *infra*, pp. 35-36, 37).

The Court of Appeals concluded that it was clear to them that the spotting limitation was not the type of dispute which would give the Committee jurisdiction to make an award under Articles 6 and 44 of the collective bargaining agreement (Appendix B, *infra*, pp. 27-28). The Court then vacated the Committee's award.

The Association now petitions this Court to review the Court of Appeals' judgment of reversal in favor of the Union.



## REASONS FOR GRANTING THE WRIT

### I. The decision of the Third Circuit is contrary to national labor policy and is in conflict with decisions of this Court.

The decision of the Third Circuit that the Committee's "implicit determination" of arbitrability could be subjected to "full, broad review" in order to scrutinize its "reasonableness" is contrary to national labor policy favoring arbitration and to the decisions of this Court interpreting and applying that policy.

The national labor policy of favoring arbitration as a means of settling labor disputes is set forth in Section 203(d) of the Act, 29 U.S.C. § 173(d), which states in part:

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

In the *Steelworkers Trilogy*,[2] this Court reviewed the national labor policy favoring arbitration and set forth a presumption of arbitrability for labor disputes:

> "[T]o be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration . . . [a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Warrior & Gulf Navigation Company*, 363 U.S. 574, 582-83 (1960).

---

[2] *United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Company*, 363 U.S. 593 (1960).

This principle of the *Steelworkers Trilogy* was reaffirmed by this Court last term in *Nolde Bros., Inc. v. Bakery Workers*, 430 U.S. 243 (1977), where, in the course of extending the agreement to arbitrate beyond the termination of the collective bargaining agreement, this Court noted that it had established "a strong presumption favoring arbitrability" which "must be negated expressly or by clear implication." 530 U.S. at 254-255. And three years prior to *Nolde Bros.*, in *Gateway Coal Company v. Mine Workers*, 414 U.S. 368 (1974), this Court reversed another Third Circuit decision and applied the presumption of arbitrability to safety disputes.

Even though the *Steelworkers Trilogy* cases arose in the context of arbitration by a neutral mutually selected by the parties, it has been clear since this Court's decision in *General Drivers, Warehousemen and Helpers, Local No. 89 v. Riss & Company, Inc.*, 372 U.S. 517 (1963), that joint labor-management committee awards which are final and binding under the applicable collective bargaining agreement are reviewed under the same standards as traditional arbitration awards. The Third Circuit, in the instant case, noted this principle in a footnote (Appendix C, *infra*, at 34).

However, contrary to the clear dictates of *Warrior & Gulf* and *Riss*, the Third Circuit stated that it could "independently decide the reasonableness" of the Committee's determination of arbitrability, and then stated that "we are not persuaded . . . that the term 'error' was intended to include matters of economic impracticability or long-standing industry practices." (Appendix C, *infra*, at 37, 39). The Court thus established a novel "rule of reason" for reviewing a joint labor-management committee's "implicit determination" of arbitrability. In so doing, the Third Circuit also ignored this Court's holding in the *Steelworkers v. American Manufacturing Company*, 363 U.S. 564, 566 (1960), that the national labor policy "can be effectuated only if the means chosen by the



parties for settlement of their differences under a collective bargaining agreement is given full play."

The only justification which the Third Circuit gave for its standard was its own decision in *Bieski v. Eastern Automobile Forwarding Company*, 396 F.2d 32 (3d Cir. 1968), a decision which has itself been criticized as a departure from this Court's teachings in the *Steelworkers Trilogy*.[3]

But *Bieski* does not support a "rule of reason" for review of determinations of arbitrability which are made in the course of rendering an award on the merits. By its own terms *Bieski* applies to a decision *not* to go to the merits, a decision which the Third Circuit called "jurisdictional". The case also had allegations of unfair representation and non-adversariness, considerations which the Third Circuit said called into doubt the "reasonableness of the Joint Committee's decision . . ." 396 F.2d at 40. There is no issue of unfair representation or non-adversariness in the instant case, however, because the Union itself is the plaintiff. Moreover, the question of the reasonableness of a final decision denominated as "jurisdictional" by the Third Circuit was said by that Court to be different from the question of "whether or not a given dispute should go to arbitration." 396 F.2d at 41. It is precisely the latter question which is the issue in the instant case. There is no explanation by the Third Circuit of why its "rule of reason" should apply to a question of whether a given dispute

---

[3] See Azoff, "Joint Committees as an Alternative Form of Arbitration Under the NLRA." 47 *Tul.L.Rev.* 325, 351-356 (1973); see also *Andrus v. Convoy Company*, 480 F.2d 604, 606 (9th Cir., 1973), where the court rejected an attack on a joint committee's jurisdiction under a theory "spun primarily" from *Bieski*.

should go to arbitration instead of this Court's well-settled standard in the *Steelworkers Trilogy.*[4]

The Third Circuit should only have looked for "an express provision" excluding this dispute from arbitration or else "the most forceful evidence of a purpose to exclude the claim from arbitration" to overcome the strong presumption of arbitrability. *Warrior & Gulf, supra,* at 585. It should not have determined whether it was reasonable to find that the spotting dispute was arbitrable. This standard failed to give "full play" to the means the parties chose to resolve their dispute. Such an approach can only "have a crippling effect on grievance arbitration", much the same as the *Cutler-Hammer* doctrine[5] had before this Court's decision on the *Steelworkers Trilogy.* For as this Court noted in *American Manufacturing Company, supra,* at 567:

> "Arbitration is a stabilizing influence only as it serves as a vehicle for handling any and all disputes that arise under the agreement."

---

[4] The Third Circuit, in its discussion of its scope of review, also incorrectly stated that the *Steelworkers Trilogy* standard on arbitrability was inapplicable when the reviewing Court could "clearly perceive" that an arbitrator did not have authority under the collective bargaining agreement. The Third Circuit cited *Torrington v. Metal Product Workers Local 1645,* 362 F.2d 677 (2d Cir. 1966), for this proposition. *Torrington* has been criticized as an impermissible review of the merits of an arbitration award. See Jones, "The Name of the Game is Decision—Some Reflections on Arbitrability and Authority in Labor Arbitration, 46 *Texas L. Rev.* 865 (1968). However, aside from such criticism, *Torrington* is inapplicable to a question of arbitrability, since the Second Circuit noted in that case that "in his written decision, the arbitrator first held that the dispute was arbitrable . . ., a decision which is not challenged." The issue was not the "power to settle the dispute", as it is in the instant case, but rather the "authority to render a given award in light of the collective bargaining agreement." 362 F.2d at 679-680.

[5] *International Association of Machinists v. Cutler-Hammer, Inc.,* 271 App.Div. 917, *Aff'd* 297 N.Y. 519 (1947).



It is hard to believe that either Congress or this Court ever intended that determinations of arbitrability involving joint labor-management committees were subject to a "rule of reason" instead of the usual strong presumption and strict requirements set forth in the *Steelworkers Trilogy.* If, however, in the interest of some other principle of national labor policy, joint committees are to be reviewed under a different standard, it is essential that such a conclusion be made on the reasoned evaluation of competing policy interests by this Court and not upon the unexplained assertion of the Third Circuit.

## II. The decision of the Third Circuit is in conflict with the decision of another Court of Appeals.

The Third Circuit's standard of reasonableness is in conflict with the Fifth Circuit's standard used in a similar situation involving a joint labor-management committee determination that a dispute was arbitrable. See *Teamsters v. Braswell Motor Freight Lines,* 392 F.2d 1 (5th Cir. 1968), *reh. denied in part* 395 F.2d 766, *appeal after remand* 428 F.2d 1371, *cert. denied* 401 U.S. 937 (1971).[6]

---

[6] In addition to the specific holding of the Fifth Circuit, at least two other circuits have indicated by implication that the presumption of arbitrability set forth in the *Steelworkers Trilogy* applies to joint committee determinations. See *Morris v. Werner-Continental, Inc.,* 466 F.2d 1185 (6th Cir. 1972), *cert. denied* 411 U.S. 965 (1972). ("If any principle is generally recognized in labor relations these days, it is that grievance procedures, leading ultimately to arbitration . . . are to be given the broadest possible construction."); See also *Andrus v. Convoy Company,* 480 F.2d 605 (9th Cir. 1973).

These two cases also raise several points relevant to this Court's consideration of the instant case. In *Werner-Continental,* the Court disagreed with the joint committee's interpretation of a term in the contract (much like the Third Circuit disagreed with the Committee's interpretation in the instant case). But the Court stated that it would not substitute its judgment, since it felt, as this Court stated in the *Steelworkers Trilogy,* that "words in a

(Footnote continued on following page)

The *Braswell* case is virtually identical to the instant case in all material respects. In *Braswell*, an employer who had acquired an additional operation by merger disputed the merged employees' position that they were covered by the National Master Freight Agreement. When a grievance was filed, the employer challenged the jurisdiction of the joint committee to act. The joint committee decided the case on the merits against the employer, who then refused to comply with the award. The district court agreed with the employer that the dispute was not arbitrable. The Fifth Circuit reversed.

Contrary to the Third Circuit's reasoning in the instant case, the Fifth Circuit based its holding squarely on the principles of the *Steelworkers Trilogy*, noting that the cases require "that settlement of industrial disputes by arbitral machinery chosen by the parties be given the fullest play." 392 F.2d at 6-7. It then looked at the "implicit determination" of the joint committee that the dispute was arbitrable. The Court stated that there were many "facts and circumstances" which could aid both parties' position on arbitrability. The Court concluded that it could not say with "positive assurance" that the dispute was not intended to be arbitrated, and it held the dispute to be arbitrable. 392 F.2d at 7.

The continuing validity of *Braswell*, as well as its application to determinations of both joint committees and traditional arbitrators, is made clear by the Fifth Circuit's

---

(Footnote continued from preceding page)

collective bargaining agreement . . . are to be understood only by reference to the background which gave risk to their inclusion." 466 F.2d at 1191.

In *Andrus*, the Ninth Circuit squarely disagreed with the Third Circuit's decision in *Bieski v. Eastern Automobile Forwarding Company*, 396 F.2d 32 (1968), a decision which was relied on by the Third Circuit in the instant case. The Ninth Circuit rejected any implication from *Bieski* that a losing party could "attack an arbitration decision made in the context of collective bargaining by attacking the arbitrator's jurisdiction." 480 F.2d at 606.



recent decision in *International Association of Machinists v. Texas Steel Company*, 538 F.2d 1116 (5th Cir., 1976). There, the Fifth Circuit cited *Braswell* in applying the presumption of arbitrability to a traditional arbitration award. The Court noted that *Braswell* was "the definitive statement in this circuit on the aspects of the federal labor law with which it dealt . . ." 538 F.2d at 1120.[7]

The *Steelworkers Trilogy* as applied by the Fifth Circuit as well as the dicta in other circuits[8] should have led the Third Circuit to explain why the Committee's "implicit determination" of arbitrability was reviewed by a "rule of reason" instead of by the usual standard. The Committee's determination was the same type of determination made by the joint committee in *Braswell*. The Third Circuit chose to ignore the well-settled policy favoring findings of arbitrability—including its own prior decisions on the matter[9]—and instead

---

[7] In another statement in *Texas Steel* which is relevant to this action, the Fifth Circuit stated that the presumption of arbitrability was implicitly intended by this Court to apply equally to pre-award suits to compel arbitration as well as post-award suits to enforce or to vacate awards. The Court noted that "A company or union should not be permitted to defeat the sound policies supporting the presumption of arbitrability by the mere procedural device of going to arbitration, but refusing to abide by the award." 538 F.2d at 1120.

[8] See case cited in Note 6, *supra*.

[9] In *Local 719, Bakery & Confectionary Workers v. National Biscuit Company*, 378 F.2d 918 (3d Cir. 1967), the Third Circuit applied the presumption of arbitrability in a factual situation which differs from the instant case only in the use of a traditional arbitrator instead of a joint committee. There, the Court said that the evidence of non-arbitrability "fails to meet the standard of forceful evidence of an unambiguous purpose to exclude the issue from arbitration." 378 F.2d at 923. More recently, in *Controlled Sanitation Corporation v. District 128*, 524 F.2d 1324 (3d Cir. 1975), the Court again applied the standard set forth in the *Steelworkers Trilogy*. There was no explanation in the instant case of why a "rule of reason" was applied instead of the standard employed in these two decisions.

asserted without elaboration that it could "independently decide the reasonableness" of the Committee's finding that the spotting dispute was arbitrable under the Maintenance of Standards clause.

The kind of unreasoned, unexplained conflict which now exists among the circuits on the question of review of joint labor-management committee determinations causes uncertainty and loss of confidence in the law, and, if not reconciled, will generate much unnecessary litigation. It is just this kind of problem which this Court's certiorari jurisdiction was designed to remedy.

**III. This case presents important issues of national labor policy requiring resolution by this Court.**

The issue of whether a "rule of reason" applies to a post-award review of a joint committee determination of arbitrability instead of the standard of the *Steelworkers Trilogy* is a matter which goes to the heart of our national labor policy. The differing views on the matter are evident from the conflicting decisions in the circuits as well as from the discussions in the law review literature.[10]

All of the litigation and discussion has taken place without substantial guidance from this Court. Since the *Riss* decision, the only other case in which this Court has approached the matter of judicial review of joint committees has been *Humphrey v. Moore*, 375 U.S. 335 (1964).

In *Humphrey*, the "subject matter jurisdiction" of a joint committee was challenged along with the union's conduct in

[10] See Azoff, *supra*, note 3 at 354: "The same presumption of arbitrability that governs traditional arbitration cases should also be applied in committee cases." But see also Feller, "A General Theory of the Collective Bargaining Agreement", 61 *Calif.L.Rev.* 663, 837 (1973): "Decisions of Joint Committees are therefore appropriately treated . . . as agreements of the parties, not arbitration awards."



representing the plaintiff union members. This Court did not discuss the standard of review to be applied, since it stated that the section conferring power "reasonably meant what the Joint Committee said or assumed it meant." 375 U.S. at 345.

This Court's brief treatment in *Humphrey* is not dispositive of the issue of judicial review of joint committee determinations. *Humphrey* does not mention the *Steelworkers Trilogy* or the *Riss* case in the brief discussion of the joint committee's power. Moreover, *Humphrey* has not been cited by any circuit court of appeals for such a wide-ranging proposition,[11] nor has this Court ever cited *Humphrey* as standing for a "rule of reason" approach.[12]

The Third Circuit, however, has now stated that it could independently decide the reasonableness of a determination by a joint committee that a given dispute was arbitrable. There is, therefore, a compelling need for this Court to now exercise

[11] The Fifth Circuit in *Braswell, supra*, cited *Humphrey* as authority for not reweighing the merits of a final and binding award, and, as pointed out in II, above, the Court applied the *Steelworkers Trilogy* on the question of arbitrability. The Ninth Circuit in *Andrus, supra*, note 6, at 606, cited *Humphrey* along with the *Steelworkers Trilogy* for the view that a party may not use a "jurisdictional gambit" to get the Courts to review a final award on the merits. Even the Third Circuit in the instant case only relied on *Humphrey* for the view that the Court could review questions of arbitrability, a settled principle which is not challenged by the Petitioner (see Appendix C, *infra*, p. 38).

[12] This Court has cited *Humphrey v. Moore* six times since 1964, but never for the view that joint committees are subject to a reasonableness standard. Rather, it has been cited as support for holding that a union has a statutory duty to fairly represent its members [*Vaca v. Sipes*, 386 U.S. 171 (1967); *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977)]. It has also been cited for the view that an action arising under § 301 of the Act is controlled by federal law [*Avco Corporation v. Aero Lodge 735*, 390 U.S. 557 (1968); *Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971)]; as well as for the statement that different forums of redress are available to an unfairly represented employee [*Republic Steel Corporation v. Maddox*, 379 U.S. 650 (1965)].

its certiorari jurisdiction to fully evaluate the competing interests and to resolve the uncertainty in our national labor policy which now exists.

Another compelling reason for this Court to grant certiorari in this case is to protect the fundamental principle of finality of arbitration awards. In the *Riss* case this Court declared that when a joint committee award was final and binding and was "the parties' chosen instrument for the definitive settlement under the agreement, it is enforceable under Section 301." 372 U.S. at 519. This was in line with national labor policy as applied in the *Steelworkers Trilogy*.

The policy reasons for according finality and deference to arbitration awards are just as valid in a joint committee context as in a traditional arbitration context. Indeed, if anything, the members of a joint committee, who are the actual parties to the collective bargaining agreement, are in a far better position to interpret the agreement than an outside arbitrator. But the kind of expansive review which was used by the Third Circuit in the instant case by definition increases the possibility that a final and binding award will be vacated. And this can only reduce the finality of awards which this Court has recognized as crucial to the system of industrial self-government, since success in post-award attacks on the "reasonableness" of a determination of arbitrability would encourage losing parties to constantly litigate the issue in the hope of upsetting the award. The effect on the overall system is clear, since as one commentator has said, "the party who prevails in arbitration is unlikely to be enamored of a process in which the award is round one rather than the end of the bout."[13] therefore, it is particularly important that this Court give consideration to the national labor policy favoring finality and arbitrability and the application of this policy to determinations of joint committees.

---

[13] Dunau, "Three Problems In Labor Arbitration", 55 *Va.L.Rev.* 427, 429 (1969).



## Conclusion

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

MARTIN LUBOW,
LUBOW & PROZZI,
804 Commonwealth Building,
316 Fourth Avenue,
Pittsburgh, Pennsylvania 15222,
*Counsel for Petitioner,*
*Western Pennsylvania Motor Carriers Association.*

## APPENDIX A

### Order

IN THE UNITED STATES DISTRICT COURT

For the Western District of Pennsylvania

---

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 249,

*Plaintiff,*

v.

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION,

*Defendant.*

---

Civil Action No. 76-815

---

AND NOW, to-wit, this 6th day of April, 1977, upon consideration of the application for injunctive relief embodied in the complaint filed by the plaintiff union in the above-captioned case, and after a full hearing and argument thereon, IT IS ORDERED that the injunction sought by plaintiff be and the same is hereby denied and plaintiff's complaint is hereby dismissed for reasons which will be set forth in an Opinion to be entered by the Court at an early future date.

HUBERT I. TEITELBAUM,
Hubert I. Teitelbaum,
*United States District Judge.*

copies to:

Joseph J. Pass, Jr., Esquire,
Jubelirer, McKay, Pass & Intrieri,
Suite 2000, Lawyers Building,
Pittsburgh, PA 15219.

Martin Lubow, Esquire,
3630 Mellon Bank Building,
525 William Penn Place,
Pittsburgh, PA 15219.



## APPENDIX B

### Memorandum Opinion

IN THE UNITED STATES DISTRICT COURT

For the Western District of Pennsylvania

---

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 249,

*Plaintiff,*

v.

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION,

*Defendant.*

---

Civil Action No. 76-815

---

On April 6, 1977, this Court entered an Order denying the plaintiff union's request for injunctive relief and dismissing its complaint in this action brought under Section 301 of the Labor Management Relations Act of 1947, *29 U.S.C. § 185(a),* to enjoin defendant's alleged violation of a labor contract to which the parties are signatories.

The Order previously entered in this case, which it is our present purpose to explicate, followed from the Court's rejection of the asserted proposition that defendant—an association of motor carriers and allied employers charged with the negotiation and administration of labor agreements involving the operation of those carriers in the counties comprising

Western Pennsylvania[1]—breached its collective bargaining agreement with plaintiff by implementing the decision of a *"labor arbitrator,"* the Eastern Conference Joint Area Committee (ECJAC),[2] eliminating union-favored restrictions in Allegheny County on a trucking industry practice known as *"spotting."*

*"Spotting"* is an industry term denoting an employer's practice of directing its drivers to leave their trailers at a designated location for loading or unloading, normally where a lengthy delay is anticipated. When an employer *"spots"* a trailer, the employee driver does not remain with the vehicle while it is waiting to be loaded or unloaded, and consequently is not paid wages for this period of time.

Labor contracts with Teamster locals permit spotting in all parts of Western Pennsylvania other than Allegheny County. In Allegheny County, the jurisdiction of plaintiff Local 249, an employer's right to spot trailers historically has been

---

[1] More specifically, defendant Western Pennsylvania Motor Carriers Association represents its member employers on the basis of powers of attorney and signs appropriate labor agreements with the involved local union on behalf of such members.

[2] The parties agree that while the proceeding before the ECJAC, a joint labor-management committee, may not be styled "arbitration" in the traditional sense, it resulted in a decision that for present purposes must be deemed and treated as an arbitration award. See *General Drivers Local 89 v. Riss*, 372 U.S. 517 (1973); *Donley v. Motor Freight Express, Inc.*, 344 F.Supp. 290 (W.D. Pa. 1972), *aff'd.* 481 F.2d 1398 (3d Cir. 1973). Our approach to the action *sub judice* is guided by an awareness of this proposition and the attendant applicability of the strong federal policy favoring arbitrated awards. See, *e.g.*, *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960), the third in a series of landmark decisions, commonly styled the "*Steelworkers Trilogy*," in which the Supreme Court delineated the limited role of the judiciary in reviewing a labor arbitration award.



restricted. Except at a few designated, agreed-upon terminal facilities, spotting has been prohibited throughout plaintiff's jurisdiction: the practice in Allegheny County has been that if a driver is dispatched to a designated customer, he or she is to remain with the trailer, earning wages, while it is waiting to be, and actually is, loaded or unloaded. It is undisputed that this prohibition against spotting—which plainly places defendant's Allegheny County member firms at a disadvantage with their competitors—has been the practice, understanding or standard within the jurisdiction of plaintiff Local 249.

The ECJAC *"award"* now challenged by the union—implementation of which by defendant and the employers it represents constitutes the contractual violation complained of—altered the historical standard by eliminating restrictions on spotting in Allegheny County. Plaintiff herein asked that the Court overturn the decision of the ECJAC and, by injunction, reimpose and perpetuate the former prohibition against spotting within the jurisdiction of Local 249. This I have refused to do, believing federal judicial intervention inappropriate in circumstances where the sole genuine issue is admittedly whether *vel non* the ECJAC decision exceeded that committee's authority in this matter and where it appears that the ECJAC both had jurisdiction to act and acted within the bounds of its contractual authority.

The dispute regarding an employer's right to spot trailers in plaintiff's jurisdiction was submitted to the ECJAC in July, 1975, some two years into the operative period of the collective bargaining agreement then in effect between the parties. While submission of the dispute took the form of a request for relief on the part of defendant, it is clear that the local union joined in submission of the issue to the joint conference

committee.[3] It is undisputed that not only the merits of the spotting issue, but also the jurisdictional issues raised by plaintiff in this forum were argued to and considered by the ECJAC.

The spotting dispute in question was submitted to the EC-JAC under Articles 6 and 44 of the parties' labor contract. These Articles provide in pertinent part—commonly known as the *"maintenance of standards clause"*—as follows:

> "The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. It is agreed that the provisions of this section shall not apply to inadvertent or bona fide errors made by the Employer(s) or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of the error. If not corrected within ninety (90) days, such better condition shall remain in effect. However, a request for relief from such error may be filed in writing with the appropriate Conference Area Committee. The Conference Area Committee, by a majority vote, shall determine whether and in what manner such better terms and/or conditions resulting from such error shall be continued or eliminated."

[3] Plaintiff's Exhibit 1, a submission agreement, is admittedly signed by plaintiff's President, Thomas Fagan, on behalf of Local 249's membership. The agreement provides: "We, the undersigned hereby agree to submit the dispute under the Rules of Procedure prescribed by the Eastern Conference Joint Area Committee . . . The undersigned further agree that a majority decision of the Eastern Conference Joint Area Committee in the above dispute will be final, conclusive and binding, with no appeal and, further, that neither party will attempt through any overt acts, to void the decision rendered."



The ECJAC assumed jurisdiction of the dispute under the above language. A hearing was scheduled and subsequently held. Thereafter, the *"arbitrator"* declined to determine the merits of the spotting question, but simply retained jurisdiction, postponing a decision in the matter until after completion of impending negotiations on a new labor agreement, the parties' then-operative agreement being due to expire on March 31, 1976.

Accordingly, prior to the contract expiration date, plaintiff and defendant undertook to attempt to negotiate their differences regarding the spotting issue during the local phases of the 1976 national freight negotiations. These local negotiations were not productive with regard to the spotting dispute—defendant was unsuccessful in its efforts to negotiate an agreement with Local 249 providing for the elimination of restrictions on spotting and granting defendant's Allegheny County member employers the same unfettered right to spot as exists elsewhere throughout Western Pennsylvania.

During the final week of local negotiations, defendant's proposal regarding the elimination of restrictions on spotting had not been agreed upon. Therefore, pursuant to the rules established by plaintiff and defendant, the spotting issue was submitted along with all other unresolved issues to the National Negotiating Committee. All of these issues were resolved in the course of the national negotiations except the one involving the proposed elimination of spotting restrictions within Local 249's jurisdiction. The spotting issue was at defendant's request withdrawn from consideration by the National Negotiating Committee.

In May, 1976, subsequent to defendant's withdrawal of the spotting dispute from negotiations, the ECJAC rendered its decision in this matter in the form of an award which eliminated previously operative restrictions and permitted defendant's member firms to spot trailers in Allegheny County. Plaintiff attacks this arbitrated award in a multi-pronged argument founded on the fundamental allegation that the ECJAC's spotting decision is null and void for reason that the joint committee's action exceeded the limits of its contractually-derived authority. Thus, plaintiff submits, the "*maintenance of standards clause*" contained in the parties' previous agreement, and remaining unchanged in their current one, requires continuation of the prohibition against spotting as the highest standard in effect at the time of contracting.

While plaintiff does not contend that the ECJAC generally lacks authority to determine whether a given "*highest standard*" shall be continued, modified or eliminated (such authority having been expressly conferred upon the appropriate conference committee by Articles 6 and 44), plaintiff does urge that the contract precludes such a determination by the ECJAC where it has not been requested within 90 days from the date of an "*error*" to relieve a party from the operation of a highest standard or condition resulting therefrom. It is the union's position that by assuming jurisdiction of and deciding a standards dispute submitted some two years into the contract period, and allegedly not resulting from anything susceptible to characterization as "*error,*" the ECJAC transgressed the bounds of its authority, thus rendering an award that is in effect a nullity.

I do not agree. It is true, as plaintiff asserts, that the question here is not merely one of "*procedure,*" properly left to the arbitrator, see *John Wiley & Sons v. Livingston*, 376 U.S. 543 (1964), but rather one of arbitrability, of the arbitrator's authority to act or make an award. As such, the question *sub judice* is properly subject to review by the Court. See *John Wiley & Sons v. Livingston, supra* at 546-547; *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 583 (1960). As our Court of Appeals stated in *Bieski v. Eastern Automobile Forwarding Co.*, 396 F.2d 32, 37-38 (3d Cir. 1968):



> ". . . [W]ith the specific labor agreement as a necessary starting point, the question of judicial review of a 'final' private decision should turn on the adequacy of that private decision under the contract in terms of the controversy presented. If the court is convinced both that the contract procedure was intended to cover the dispute and, in addition, that the intended procedure was adequate to provide a fair and informed decision, then review of the merits of any decision should be limited to cases of fraud, deceit or instances of unions in breach of their duty of fair representation.
>
> "If, however, the private decision complained of is a 'jurisdictional' one . . . then the court is a proper forum to review this decision on the basis of its analysis of the contract entered into by the parties . . ."

In sum, then, I do not quarrel with the proposition advanced by plaintiff that the Court should review the merits of the ECJAC's affirmative jurisdictional decision. Mere "*procedural*" questions growing out of a dispute may be for the arbitrator, as defendant vigorously urges, but the instant question is of a different and more fundamental stripe, involving the very authority of the ECJAC to consider and

decide the spotting issue. In this context, the judicial abstention requested by defendant would be inappropriate.[4]

We turn then to the central question of arbitrability and, consequently, to the merits of the ECJAC's jurisdictional decision in this matter of spotting. It is at this point, on the issue of construing the contract language which is the source of the ECJAC's authority (rather than on the threshold issue of availability and scope of review), that the Court's view diverges from that of the plaintiff union.

Essentially, the union contends that the pertinent contract language —*i.e.*, the language of the *"maintenance of standards clause"* contained in Articles 6 and 44 (quoted above)—limits the ECJAC's dispute—settling authority to the resolution of questions involving the continuation or elimination of a given *"highest standard"* or practice (1) in effect because of a bona fide error, and (2) where a request for relief is submitted to the joint committee within 90 days of such error. In my view, the union's construction of the operative clause is at best overly restrictive.

---

[4] A further observation is in order at this juncture: despite some apparent confusion in the matter, it appears that the merits of the ECJAC spotting award—that is, the substance of the decision itself—are not challenged in this action. What is challenged is the jurisdiction or authority of the arbitrator to consider the dispute and make *any* award, including the one ultimately rendered. Accordingly, inasmuch as the issue before me is the ECJAC's authority to render an award in this case, and not the award itself, our review properly encompasses the merits of the arbitrator's jurisdictional decision (as noted *supra*) and is not limited to an application of the so-called "essence test" enunciated by the Supreme Court in *United Steelworkers of America v. Enterprise Wheel and Car Corp., supra* (at 579). For an elaborated definition of the "essence test" as applied in this Circuit, see *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123, 1128 (3d Cir. 1969). See also this Court's relatively recent opinion in *Teamster's Local 249 v. Potter-McCune Co.*, 412 F.Supp. 8 (W.D. Pa. 1976).



First, it seems to me patent that, as the *"arbitrator"* necessarily determined, the contract does not provide for a 90-day (after error) limitations period on submissions to the ECJAC. The next-to-last sentence of the *"standards clause"* clearly contemplates filings with the ECJAC at any time, the 90-day period pertaining to and limiting only the availability of *"self-help"* as a means of correcting errors. I believe that this construction of the jurisdictional provision not only *"draws its essence"* from the parties' agreement,[5] but also is the most reasonable interpretation of the contract.

Second, as to plaintiff's assertion that the ECJAC exceeded its authority by accepting jurisdiction of and deciding a standards dispute not resulting from any *"error,"* bona fide or inadvertent, the Court is wholly unprepared to say on the basis of the present record that the acquiescence of defendant and its members in the development of prohibitions against spotting in Allegheny County was not an error of the type contemplated by the relevant contract clause. Initially allowed by defendant's employer membership, the restrictions on spotting were eventually recognized as unique to Allegheny County, and thereby the source of serious economic disadvantage to Allegheny County trucking firms. At that point, after inquiry into and full recognition of the situation, the spotting dispute was submitted to the ECJAC. That committee heard argument and perforce determined that relief from an *"error"* was indeed requested by defendant. Mindful of the strong policy favoring arbitration and findings of arbitrability, I cannot say that allowing the spot-

---

[5] The union apparently would have the Court apply the "essence test"—the standard for review of an arbitration award itself—in judging the ECJAC's interpretation of its authority. As previously noted, I believe closer inquiry is required here. Such inquiry, however, impels rejection of the union's position.

ting prohibition to develop only in Allegheny County, without an awareness of the situation throughout the remainder of Western Pennsylvania, was not such an inadvertent or bona fide error as is required to trigger ECJAC jurisdiction under the contract. On the contrary, it would appear to me that defendant's uninformed acquiescence in the development of the disputed standard is precisely that type of error which, under a reasonable reading of the agreement, must be deemed to trigger access to a ECJAC determination regarding continuation, modification or elimination of that standard.

In sum, then, I find that the *"arbitrator"* in this case did not exceed the scope of its contractual authority. The parties' collective bargaining agreement conferred upon the ECJAC jurisdiction to hear and determine the disputed spotting standard.

We are left with the prospect of addressing each of the welter of secondary issues raised (in either the formal sense or somewhat more loosely) by the union during this proceeding. We decline the opportunity as unnecessary.

The critical question here is one of arbitrability. In that regard, the Court has stated its view. The remaining union contentions—including those alleging: lack of notice or a further proceeding prior to issuance of the ECJAC's final decision in May, 1976; divestiture of any continuing ECJAC authority to decide the spotting issue (assuming *arguendo* initial jurisdiction) by reason of defendant's ultimate withdrawal of the issue from the national negotiations; and the impropriety of permitting a party to obtain through a dispute settlement procedure a proposal which that party first submitted to and was unsuccessful in obtaining in the negotiation process—have been fully considered. In my judgment, each is either unfounded or inapposite in the present factual context. None is persuasive of a result different from that embodied in the Court's Order of April 6, 1977.



The dispositive Order referred to, issued in the absence of even a marginally cognizable allegation of fraud or deceit, stemmed fundamentally from a coupling of an acute awareness of labor arbitration's favored status with the Court's conviction ". . . *both that the contract procedure was intended to cover the dispute and, in addition, that the intended procedure was adequate to provide a fair and informed decision* . . ." *Bieski v. Eastern Automobile Forwarding Co., supra* at 38. Given my agreement with the ECJAC's interpretation of the scope of its jurisdiction and authority under the contract and the clear adequacy of the joint committee proceeding, the Order will stand as entered.

For reasons set forth above, plaintiff's request for injunctive relief has been denied and the instant action dismissed.

HUBERT I. TEITELBAUM,
Hubert I. Teitelbaum,
*United States District Judge.*

## APPENDIX C

### Opinion of the Court

UNITED STATES COURT OF APPEALS

For the Third Circuit

---

No. 77-1764

---

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 249,

*Appellant,*

vs.

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION.

---

(D.C. Civil No. 76-815)

---

Appeal From the United States District Court
For the Western District of Pennsylvania

---

Argued February 15, 1978

Before: SEITZ, *Chief Judge*, ROSENN and GARTH, *Circuit Judges*.

Joseph J. Pass, Jr., Esquire, Edward H. Walter, Esquire, Jubelirer, Pass & Intrieri, 2000 Lawyers Building, Pittsburgh, Pennsylvania 15219, Attorneys for Appellant.



Martin Lubow, 3630 Mellon Bank Building, 525 William Penn Place, Pittsburgh, Pennsylvania 15219, Attorney for Appellee.

GARTH, *Circuit Judge*

This appeal presents a problem involving the jurisdiction of a joint committee to resolve a labor dispute between the Western Pennsylvania Motor Carriers Association (the Association), representing motor carriers and allied employers in twenty-nine counties of Western Pennsylvania, and Local 249 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union), the local union with authority in Allegheny County, Pennsylvania.

I

The controversy in this case centers on a trucking industry practice known as "spotting", whereby a carrier may instruct a driver to leave his trailer at a specified location, and not to remain with it while it is being loaded or unloaded. The driver may then be assigned other duties. In all counties of Western Pennsylvania other than Allegheny County, collective bargaining agreements with Teamster locals permit spotting. In Allegheny County, however, spotting has been prohibited except at a few designated terminal facilities. These restrictions on spotting in Allegheny County have been in existence since the 1958 collective bargaining agreement, and have been maintained since then by maintenance of standards clauses in all subsequent contracts. The Maintenance of Standards Clause which at the time of this dispute limited the right of employers to spot provided:

> The Employer agrees that all conditions of employment in his individual operation relating to wages,

hours of work, overtime differentials, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. It is agreed that the provisions of this section shall not apply to inadvertent or bona fide errors made by the Employer(s) or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of the error. If not corrected within ninety (90) days, such better condition shall remain in effect. However, a request for relief from such error may be filed in writing with the appropriate Conference Area Committee. The Conference Area Committee, by a majority vote, shall determine whether and in what manner such better terms and/or conditions resulting from such error shall be continued or eliminated.[1]

It is undisputed that the proscription against spotting has been the standard in Allegheny County. It is also undisputed that such restrictions place Allegheny County employers at a competitive economic disadvantage with Association members in other counties.

On July 3, 1975 the Association, on behalf of Allegheny County employers, submitted a request to the Eastern Conference Joint Area Committee (ECJAC)[1a] seeking relief from

[1] Article 6, section 1 of the National Master Freight Agreement and Article 44, section 1 of the Teamsters Joint Council No. 40 Freight Division Local Cartage Supplemental Agreement. The two articles are identical.

[1a] The Eastern Conference Joint Area Committee is a joint labor-management committee, created under article 45 of the collective bargaining agreement, and charged with the resolution of certain disputes between employers and local unions.



the spotting restrictions, pursuant to articles 6 and 44 of the collective bargaining agreement. ECJAC assumed jurisdiction, and held a hearing. Both sides submitted briefs. The Union argued before ECJAC that ECJAC did not have jurisdiction over the dispute; the Union also argued the merits on of the question.[2] In October ECJAC reserved decision and, while retaining jurisdiction ordered that the parties attempt to reconcile the spotting issue at their forthcoming contract negotiations. ECJAC also noted that if that issue was not resolved at that time, it would render a decision.

During the parties' negotiations the spotting issue was not settled. Accordingly, pursuant to their negotiating procedures, it was submitted to the National Negotiating Committee for final resolution. The Association thereafter withdrew from the Negotiating Committee its proposal with respect to spotting. Subsequently, in May, 1976, ECJAC rendered its decision on the merits. ECJAC's award eliminated all restrictions on spotting in Allegheny County.

The Union then brought an action in district Court pursuant to section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a). The Union sought to have ECJAC's award set aside, and to enjoin spotting by the Allegheny County employers. The record reveals that the hearing for preliminary and permanent injunction was consolidated. The facts were not disputed. The district Court, by order of April 6, 1977, denied injunctive relief and dismissed the Union's Complaint. The district Court held that ECJAC had jurisdic-

[2] Both the Union and the Association signed the ECJAC submission form. However, the fact that the Union disputed ECJAC's jurisdiction and argued the merits before ECJAC does not constitute a waiver of its jurisdictional objections. Bakery and Confectionary Workers v. National Biscuit Co., 378 F.2d 918, 921 (3d Cir. 1967). *Cf. e.g.*, Fed. R. Civ. P. 12(b) (no special jurisdictional appearances are required in federal Court).

tion over the controversy (*i.e.* that the question was arbitrable), and that therefore ECJAC's award was binding. 430 F. Supp. 1258 (W.D.Pa. 1977). We reverse.

II

A

Courts have a limited role in reviewing arbitration awards.[3] *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Co.*, 363 U.S. 593 (1960). When an arbitrator has jurisdiction over a dispute, the merits of his award will be reviewed very narrowly. The arbitrator's award will be set aside only if it does not "draw its essence from the collective bargaining agreement".[4] The award will not be disturbed unless it "can in no rational way be derived from the agreement . . . [or unless] there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and the law of the shop. . . ." *Ludwig Honold Manufacturing Co. v. Fletcher*, 405 F.2d 1123, 1128 (3d Cir. 1969).[5]

---

[3] Joint committee awards are reviewed under the same standards as binding arbitration awards. General Drivers, Warehousemen & Helpers, Local Union No. 89 v. Riss & Co., Inc., 372 U.S. 517 (1963); Bieski v. Eastern Automobile Forwarding Co., 396 F.2d 32 (3d Cir. 1968). *See* Price v. Teamsters, 457 F.2d 605 (3d Cir. 1972).

[4] United Steelworkers v. Enterprise Wheel & Car Co., 363 U.S. 593, 597 (1960).

[5] An award may also be overturned if fraud, deceit, or breach by the union of its duty of fair representation is established. Bieski v. Eastern Automobile Forwarding Co., 396 F.2d 32, 38 (3d Cir. 1968). There are cer-

(Footnote continued on following page)



However, whether the arbitrator has jurisdiction over a particular dispute—*i.e.* whether the controversy is arbitrable—is a question for the Court to decide. A jurisdictional decision by an arbitrator that he has authority to decide a dispute is subject to a much broader and more rigorous judicial review. *Bieski v. Eastern Automobile Forwarding Co., supra; Torrington Co. v. Metal Product Workers Local 1645*, 362 F. 2d 677, 680 (2d Cir. 1966). *See John Wiley & Sons v. Livingston*, 376 U.S. 543 (1964); *Humphrey v. Moore*, 375 U.S. 335 (1964). As we said in *Bieski:*

> If, however, the private decision complained of is a "jurisdictional" one—that a certain dispute will not be considered on its merits by the private decision-maker—then the Court is a proper forum to review this decision on the basis of its analysis of the contract entered into by the parties.

396 F.2d at 38.

Since the jurisdiction of the arbitrator is contractually granted by the parties, the question as to whether a particular dispute is arbitrable necessarily depends on "whether the parties agreed to submit the dispute to arbitration." *Ludwig Honold Manufacturing Co. v. Fletcher, supra*, 405 F.2d at 1125 n.2. *See Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 374 (1974). Thus a reviewing court must in the first instance examine the jurisdictional predicate (*i.e.*, the contract

---

(Footnote continued from preceding page)

tain other limited grounds for vacating an arbitrator's award, such as partiality or other arbitrator misconduct, where the award violates a specific statutory command, where the award is overly vague or ambiguous, or where the award violates public policy. *See* Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1128 n. 27 (3d Cir. 1969). None of these circumstances, however, are presented here, and thus are not relevant to our review of ECJAC's award.

provision) which purports to require the submission of a dispute to arbitration. The Court does so to ascertain whether the parties intended that the controversy be included within the scope of the arbitration clause. In making this determination a Court must be mindful of the strong presumption in favor of arbitrability contained in the *Steelworkers* trilogy.[6] Arbitrability "should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *United Steelworkers v. Warrior & Gulf Navigation Co., supra,* 363 U.S. at 581. *See Controlled Sanitation Corp. v. District 128,* 524 F.2d 1324, 1328 (3d Cir. 1975). Nevertheless, an "arbitrator's decision that he has authority should not be accepted where the reviewing Court can clearly perceive"[7] that the collective bargaining agreement does not grant him that authority. *See Torrington v. Metal Product Workers Local 1645, supra,* 362 F.2d at 680.

B

The sole question[8] which we must answer is whether ECJAC had jurisdiction to grant the Association relief from the prohibitions on spotting. Such jurisdiction, if it exists, must be derived from the Maintenance of Standards Clause of the

---

[6] United Steelworkers v. American Mfg. Co.; 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Co., 363 U.S. 593 (1960).

[7] Torrington v. Metal Products Workers Local 1645, 362 F.2d 677, 680 (2d Cir. 1966).

[8] The appellant Union also raises questions with respect to the fairness and adequacy of the ECJAC procedure, and possible waiver by the Association of the right to an ECJAC determination. Given our disposition of the jurisdictional question, we do not reach the Union's other arguments.



collective bargaining agreement (articles 6 and 44).[9] Those clauses provide that conditions of employment will be maintained at the highest standards in effect at the time of the signing of the agreement. However, articles 6 and 44 go on to state:

> "provisions of this section shall not apply to inadvertent or bona fide errors made by the Employer(s) or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of the error. If not corrected within ninety (90) days, such better conditions shall remain in effect. However, a request for relief from such error may be filed in writing with the appropriate Conference Area Committee."

The Joint Committee is given the authority to "determine whether and in what manner such better terms or conditions resulting from such error shall be continued or eliminated."

Thus, ECJAC has the authority—jurisdiction—to grant relief from the spotting restrictions *only* if those restrictions constitute an "inadvertent and bona fide error" as that term is used in articles 6 and 44. In the absence of any such "error", no jurisdiction can exist. As is evident from the discussion of our scope of review (Part IIA of this opinion, *supra*) we are not bound by ECJAC's implicit determination that it did have jurisdiction to resolve the issue submitted to it. Since this is a jurisdictional question, we may independently decide the reasonableness of ECJAC's interpretation of the term "error". *See Bieski v. Eastern Automobile Forwarding Co., supra. Bieski* involved a dispute concerning the seniority to be

---

[9] The two sections are identical. At page 1 of this opinion we quote those provisions in full.

granted transferred employees when one carrier purchased the real estate and operating equipment of another. The labor contract in that case conferred authority on a Joint Committee to decide the controversy "[in] the event that the employer absorb[ed] the business of another . . . carrier." 396 F.2d at 32. The Joint Committee's jurisdiction, therefore, hinged on whether there had been such an "absorption" of business. On review, this Court, did not defer to the Committee's jurisdictional decision to "full, broad review." *Id.* at 38. *See Humphrey v. Moore,* 375 U.S. 335, 345 N. 8 (1964).[10]

As in *Bieski,* the jurisdiction of ECJAC in this case hinges on the interpretation of a single contractual term. The Association argues that, although the spotting restrictions have been in effect in Allegheny County since 1958,[11] they constitute an "error" since the Association only "realized in 1975 that it was a mistake to [acquiesce in the prohibitions] in light of current economic developments." Association Brief at 3. In effect, the Association invites us to hold that a long-standing and agreed-upon practice has been transformed into an "inadvertent and bona fide error"—which would form a jurisdictional predicate for arbitration—because a change in economic circumstances renders that practice a costlier one than had been anticipated.[12] We decline this invitation.

---

[10] In *Humphrey* the Court said:

> "Reconciliation of these two provisions [of the contract] going to the power of the committee under the contract, itself presented an issue ultimately for the court, not the committee, to decide." 375 U.S. at 345 n. 8.

[11] It is significant that the employers have acquiesced in those restrictions and complied with them since that date.

[12] At no time either before ECJAC or before this Court has the Association ever put forward any basis other than "economic disadvantage" for asserting that the spotting prohibition was an "error".



It is clear to us that the limitation on spotting was not an "inadvertent and bona fide error."[13] We are not persuaded—as apparently the district Court was—that the term "error" was intended to include matters of economic impracticability or long-standing industry practices. Disputes concerning such matters or practices are normally and more properly the subject of collective bargaining negotiations, where the relinquishment or continuation of such restrictions may well constitute the *quid pro quo* for some other contract objective. Apparently we do not stand alone in this assessment. ECJAC itself initially referred the parties to the negotiating table on this issue. It was only when the Association withdraw the issue from the Negotiating Committee after an impasse had developed[14] that ECJAC finally decided the spotting question.

---

[13] We are mindful of the fact that our Court "has consistently rejected invitations to inquire into arbitrability, where such inquiry would be coextensive with a determination of the merits of a controversy." Local 719, Bakery & Confectionary Workers v. National Biscuit Co., 378 F.2d 918, 923 (3d Cir. 1967). That, however, is not the situation before us, since the ECJAC clearly has no authority to grant the requested relief unless there has been an "error".

[14] Plaintiff's Exhibit 9—"Items in Dispute" between the Union and the Association during their March, 1976 contract negotiations—reveals that the parties were "deadlocked" on the Association's proposed additions to the contract, one of which provided:

> Employer: ADD: The Employer shall have the unlimited and unrestricted right to spot trailers for loading and/or unloading without an accompanying employee.

The other provided:

> *Employer*—proposes that right to spot be available in all local union areas.

The notations that appear in conjunction with each proposal are consistent in that they reveal an absence of agreement. Comments reciting "deadlocked," "no agreement", "Company says hold", and "Company stays" are handprinted beside the respective proposals.

Having concluded that the spotting prohibition in Allegheny County was not an "inadvertent or bona-fide error" within the meaning of the Maintenance of Standards Clause, we hold ECJAC lacked jurisdiction over the spotting dispute, and that therefore its award must be vacated.

III

The order of the district Court which denied injunctive relief to the Union and which dismissed the Union's complaint will be reversed. The case will be remanded to the district Court with directions to vacate ECJAC's award, and for further proceedings, including the entry of an appropriate injunction.

---

TO THE CLERK:
Please file the foregoing opinion.

(ILLEGIBLE),
*Circuit Judge.*



## APPENDIX D

**Judgment**

UNITED STATES COURT OF APPEALS

For the Third Circuit

---

No. 77-1764

---

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA, LOCAL 249,

*Appellant,*

vs.

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION.

---

(D. C. Civil No. 76-815)

On Appeal From the United States District Court
For the Western District of Pennsylvania

---

Present: SEITZ, *Chief Judge* and ROSENN and GARTH, *Circuit Judges.*

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel on February 15, 1978.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, filed April 6, 1977, be, and the same is hereby reversed, and the cause remanded to the said District Court with directions to vacate ECJAC's award, and for further proceedings, including the entry of an appropriate injunction, all in accordance with the opinion of this Court. Costs taxed against appellee.

ATTEST:

THOMAS (ILLEGIBLE),
*Clerk.*

March 30, 1978



## APPENDIX E

**_Sur_ Petition for Rehearing**

UNITED STATES COURT OF APPEALS

For the Third Circuit

---

No. 77-1764

---

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 249,
*Appellant-Respondent,*

v.

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION,
*Appellee-Petitioner.*

---

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM, *Circuit Judges*.

The petition for rehearing filed by Western Pennsylvania Motor Carriers Association, in the above entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the Court *in banc*, the petition for rehearing is denied.

By the Court,
(ILLEGIBLE),
*Judge.*

Dated: April 24, 1978

## APPENDIX F

### Statutes Involved

Section 203 (d) (29 U.S.C. § 173 (d)) of the Labor-Management Relations Act of 1947 reads as follows:

> (d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Section 301(a) (29 U.S.C. § 185 (a)) of the Labor-Management Relations Act of 1947 reads as follows:

> (a) Suits for violation of contracts between an employer and labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Supreme Court, U. S.
FILED
JUN 27 1978
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

October Term, 1977

No. 77-1698

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 249,
Respondent.

## BRIEF ON BEHALF OF RESPONDENT

JOSEPH J. PASS, JR., ESQUIRE
EDWARD H. WALTER, ESQUIRE
JUBELIRER, PASS & INTRIERI
2000 Lawyers Building
Pittsburgh, Pennsylvania 15219
Counsel for Respondent

SMITH BROS. LAW PRINTERS, 620 SECOND AVENUE, PITTSBURGH, PA. 15219

## INDEX


| | PAGE |
|---|---|
| Question Presented | 1 |
| Statement of the Case | 1 |
| Reasons for Denying the Writ | 4 |
| I. The Decision of the Third Circuit does not Represent a Departure From the Dictates of this Court or our National Labor Policy | 4 |
| II. The Decision of the Third Circuit is not in Conflict With the Decision of Another Court of Appeals | 8 |
| Conclusion | 11 |


## TABLE OF AUTHORITIES


| CASES | PAGE |
|---|---|
| Humphrey v. Moore, 375 U.S. 335, 84 S. Ct. 363, 11 L.Ed. 2d 370 (1964) | 5, 6 |
| International Association of Machinists v. Texas Steel Company, 538 F.2d 1116 (5th Cir. 1976) | 9 |
| Local 719, American Bakery and Confectionery Workers v. National Biscuit Company, 378 F.2d 918 (3rd Cir. 1967) | 7 |
| Price v. Teamsters, 457 F.2d 605 (3rd Cir. 1972) | 9 |
| Teamsters v. Braswell Motor Freight Lines, 392 F.2d 1 (5th Cir. 1968), reh. denied in part 395 F.2d 655, appeal after remand 428 F.2d 1371, cert. denied 401 U.S. 937 (1971) | 8 |
| United Steelworkers of America v. American Manufacturing Company, 363 U.S. 564, 80 S. Ct. 1343, 4 L.Ed. 2d 1403 (1960) | 4 |
| United Steelworkers of America v. Enterprise Wheel and Car Company, 363 U.S. 593, 80 S. Ct. 1358, 4 L.Ed. 2d 1424 (1960) | 4 |
| United Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U.S. 574, 80 S. Ct. 1347, 4 L.Ed. 2d 1409 (1960) | 4, 5 |

STATUTE

| | |
|---|---|
| Labor-Management Relations Act of 1947, as amended (61 Stat. 136, et seq.) (29 U.S.C. §141, et seq.): Section 203(d) (29 U.S.C. §173(d)) | 4 |

IN THE

# Supreme Court of the United States

October Term, 1977

No. 77-1698

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 249,
Respondent.

## BRIEF ON BEHALF OF RESPONDENT

## ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 249, Respondent, respectfully prays this Court refuse to grant a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on March 30, 1978, re-hearing denied April 24, 1978, in which the Third Circuit reversed the District Court and remanded the case with directions.

## QUESTION PRESENTED

Whether the Standard of Review Utilized By The Third Circuit in Determining The Arbitrability of a Particular Dispute is Consistent With The Decisions of This Court and Our National Labor Policy.

---

## STATEMENT OF THE CASE

It appearing that the facts set forth in the opinion of the Court of Appeals are substantially accurate and complete, the Respondent shall address only those portions of the Petitioner's Statement of the Case which it considers deficient in detail and scope. Specifically, the following should be considered in addition and as a modification of the facts set forth in the Petitioner's Statement of the Case.

On July 3, 1975, some two years after the execution of the then effective collective bargaining agreement, the Association submitted its request to the Eastern Conference Joint Area Committee (ECJAC) for relief under Articles 6 and 44 seeking to eliminate the restrictions on spotting (R. 76a).[1] On October 29, 1976, the ECJAC ordered the parties to adjust the matter at the forthcoming negotiations (R. 80a).

During the ensuing negotiations, the Association attempted to amend the agreement to eliminate all restrictions on spotting (R. 84a-89a). This proposal was consistently rejected by the Union and remained unresolved. The rules between the parties provide that

---

1. For the convenience of this Court, all page references will be to the Appendix filed by the Union in the Court of Appeals. They will be designated as "R.....".



all unresolved issues be submitted to the National Negotiating Committee for final resolution (R. 27a). Pursuant to those rules all of the unresolved issues, except the proposal relating to spotting, were submitted to the National Negotiating Committee. The Association withdrew its proposal to eliminate the restrictions on spotting, thereby precluding the National Negotiating Committee from resolving the dispute (R. 28a). Thereafter, the Association, without the knowledge of or notice to the Union, induced the ECJAC to render a decision in May 1976, granting the Association's request (R. 30a, 31a). The agenda of the cases to be considered by the ECJAC during that period did not list the Association's original request of July 3, 1975 (R. 91a-108a).

Finally, some additional clarification is needed with regard to the Petitioner's assertion that the Union signed a joint submission form agreeing to be bound by the Committee's decision. Although the submission form admittedly bears the signature of the Union President, his signature was required before the Union could contest the Committee's jurisdiction (R. 22a).

With the correction outlined above, and the additional facts set forth in the Respondent's Statement of the Case, the Respondent accepts the facts outlined by the Court of Appeals and the Petitioner as an adequate statement of the case.

---

## REASONS FOR DENYING THE WRIT

### I. The Decision of The Third Circuit Does Not Represent a Departure From The Dictates of This Court Or Our National Labor Policy.

In 1960, in the Steelworkers Trilogy[2] this Court reenforced the Congressional policy set out in Section 203(d) of the Labor Management Relations Act, 29 U.S.C. §173(d), that private dispute settlement was the desirable method for settling labor controversies. However, at the same time this Court made it equally clear that the authority of an arbitrator was not unlimited, and questions involving arbitrability were to be resolved by the Courts.[3] Judicial inquiry is proper when a party challenges the arbitrator's authority to make a particular award. *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960).

---

2. *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed. 2d 1409 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960).

3. *In United Steelworkers of America v. Warrior & Gulf Navigation Co., supra,* (363 U.S. at 583, n. 7), Mr. Justice Douglas, speaking for the majority of this Court, reiterated that the question of arbitrability is for the Courts to decide.

> "Where the assertion by the claimant is that the parties excluded from court determination not merely the decision of the merits of the grievance but also the question of its arbitrability, vesting power to make both decisions in the arbitrator, the claimant must bear the burden of a clear demonstration of that purpose."



The Third Circuit, in recognition of its limited role, confined its inquiry to whether the ECJAC had jurisdiction to grant the Association relief from the prohibitions on spotting (Appendix C, p. 36). In making this determination, the Third Circuit was mindful of the admonitions of this Court that arbitrability "should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (Appendix C, p. 36, citing *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. at 582, 583).

The authority for private dispute settlements, whether it be a traditional arbitrator or a joint committee, is a matter of contract between the parties. A party cannot be forced to arbitrate disputes which do not fall within the purview of the contractual provision conferring jurisdiction on the arbitrator. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. at 582. In the instant case the authority of the joint committee was clearly defined and limited by the terms of the Maintenance of Standards clause of the collective bargaining agreement (Articles 6 and 44) (R. 63a-73a). After reviewing the contractual language the Third Circuit correctly concluded that the "ECJAC has authority —jurisdiction—to grant relief from the spotting restrictions *only* if those restrictions constitute an 'inadvertent or bona fide error. . . .' In the absence of any such 'error,' no jurisdiction can exist." (Appendix C. p. 37).

The standard of review utilized by the Third Circuit was predicated upon the guidelines established by this Court in *Humphrey v. Moore,* 375 U.S. 335, 84 S.Ct. 363, 11 L.Ed.2d 370 (1964). Although in *Humphrey* this Court

affirmed the decision of the joint committee, it did so only after judicial inquiry convinced this Court that the Committee's decision was reasonable in light of the contractual language. However, this Court explicitly stated that the Committee's power to decide the dispute was limited, and the Committee's interpretation of its power open to the court review.[4]

Contrary to the Petitioner's assertion, the Third Circuit did not promulgate a new standard of review. The judicial inquiry conducted by the Third Circuit was identical to that utilized by this Court in *Humphrey*. Although mindful of the "presumption of arbitrability," the Third Circuit vacated the joint committee's decision because it was clear to the Court that the spotting restrictions did not constitute an "inadvertent or bona fide error." Since the spotting restrictions did not constitute an "inadvertent or bona fide error," the Joint Committee was without authority to disturb the spotting practice. (Appendix C, pp. 38-39). The Third Circuit rejected the Association's assertion that a long-standing and agreed-upon practice was transformed into an "inadvertent and bona fide error"—a necessary jurisdictional predicate for arbitration—because economic circumstances ren-

---

4. In *Humphrey,* this Court did not defer to the joint committee's determination of arbitrability; instead, this Court conducted an in-depth inquiry into the committee's jurisdictional determination. With regard to the issue of arbitrability, this Court stated that the "... section of the contract by its own terms appears to limit the authority of the committee.... Reconciliation of these two provisions, going to the power of the committee under the contract, itself presented an issue ultimately for the court, not the committee, to decide." (375 U.S. at 345, n. 8)



dered the practice more costly than had been anticipated (Appendix C, p. 38).

The restrictions on spotting, which had been incorporated into successive collective bargaining agreements since 1958, did not result from anything susceptible to characterization as "error." The most forceful evidence of this fact is the memorandum submitted by the Association to the ECJAC, which failed to indicate that the Association was requesting relief from an error (R. 76a-78a).

The Third Circuit's inquiry into the authority of the ECJAC convinced the Court that the restrictions on spotting were not susceptible of being characterized as an error,[5] and consequently the ECJAC was without authority to rule upon the Association's request. It is respectfully submitted that the decision of the Third Circuit does not manifest infidelity to the dictates of this Court, or our national labor policy, and therefore, certiorari should be denied.

---

5. The Third Circuit's adherence to the dictates of this Court and our national labor policy are clearly evidenced by the following:

> "We are mindful of the fact that our Court 'has consistently rejected invitation to inquire into arbitrability, where such inquiry would be coextensive with a determination of the merits of a controversy.' *Local 719 Bakery and Confectionery Workers v. National Biscuit Company,* 378 F.2d 918, 923 (3rd Cir. 1967). That, however, is not the situation before us, since the ECJAC clearly has no authority to grant the requested relief unless there has been an 'error' ". (Appendix, p. 39 n. 13).

**II. The Decision of The Third Circuit is Not in Conflict With The Decision of Another Court Of Appeals.**

The Petitioner has asserted that the decision of the Third Circuit is in conflict with the decision of the Fifth Circuit in *Teamsters v. Braswell Motor Freight Lines,* 392 F.2d 1 (5th Cir. 1968), *reh. denied in part* 395 F.2d 655, *appeal after remand,* 428 F.2d 1371, *cert. denied.* 401 U.S. 937 (1971). It is respectfully submitted that this contention is without merit.

The *Braswell* decision actually reaffirms the Third Circuit's refusal to defer to an arbitrator's determination regarding subject matter jurisdiction. In fact, the Court in *Braswell* explicitly stated that judicial review is appropriate when the question involves arbirability (392 F.2d at 6, n. 6).

The judicial inquiry conducted by the Fifth Circuit was identical with that utilized by the Third Circuit in determining whether the joint committee had the authority to decide the "spotting" controversy. In *Braswell* the Court carefully scrutinized the contractual language which defined the extent of the committee's jurisdiction. The Court then concluded that the joint committee's determination regarding arbitrability was susceptible of an interpretation covering the dispute. Similarly, the Third Circuit refused to defer to the committee's determination of arbitrability, and instead made an independent inquiry. Although the method utilized by both Courts was identical, the Third Circuit found the committee's determination to be unreasonable, and hence, not susceptible of an interpretation covering the dispute.



In addition to the *Braswell* decision, the Petitioner relies upon the Fifth Circuit's decision in *International Association of Machinists v. Texas Steel Company,* 538 F.2d 1116 (5th Cir. 1976), as support for its contention that there is a conflict among the various circuits. In *Texas Steel* the Court again reaffirmed that it is the Court's function to inquire into whether the dispute actually was arbitrable (538 F.2d at 1119). In *Texas Steel* the Court of Appeals affirmed the district court's finding that the dispute was arguably within the confines of the arbitration clause. However, the procedure utilized by the Court in arriving at that determination was identical to the procedure utilized by the Third Circuit. Both Courts refused to defer to the arbitrator's determination regarding arbitrability. Each Court scrutinized the contractual language to determine whether it was susceptible to an interpretation covering the asserted dispute. Although the ultimate conclusion reached by the two circuits differed, the underlying methodology was consistent with this Court's guidelines.

The "presumption of arbitrability" was never intended to expand the jurisdictional limits which the parties contractually agreed would govern their relationship. The record in the instant proceeding is replete with evidence that the restrictions on spotting were knowingly incorporated into successive collective bargaining agreements since at least 1958 (R. 76a-77a). This is not a case where the arbitrator was called upon to decide problems left by gaps in the contract. The contractual language explicitly states that relief is appropriate only if the conditions resulted from an error. In *Price v. Teamsters,* 457 F.2d 605 at 610 (3rd Cir. 1972), the Third Circuit stated:

> "A court will defer to arbitrators or committees when they are exercising their delegated powers to decide unforeseen or unresolved problems arising out of gaps or content in the contract. However, *it will not allow them to ignore provisions embodied in the agreement: the basic contract rights must be enforced.*"

In the instant case the basic contractual rights granted to the Union permitted them to enjoy the highest standard of benefit established. That highest standard could not be subject to the ECJAC's jurisdiction unless it resulted from an error. At best, it may have been a bad economic decision by the employer to agree to such a condition of employment (Appendix C, pp. 38, 39). Nonetheless, absent an error, the ECJAC had no authority to pass upon the Association's request and the Union was entitled to have its basic contract rights protected.

The Respondent respectfully submits that this Court should refuse to grant certiorari, since the standard of review utilized by the Third Circuit was consistent with the decisions of this Court and other circuits. The Respondent does not believe there is uncertainity in our national labor policy, nor is there uncertainty in the decisions of the various circuits.

---



## CONCLUSION

It is respectfully submitted that for the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI

By: Joseph J. Pass, Jr., Esquire

By: Edward H. Walter, Esquire

---